

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

ERIC LEE PUENTES,

Plaintiff,

vs.

BUTTE SILVERBOW DETENTION
CENTER, et al.,

Defendants.

CV-19-46-BU-BMM-KLD

ORDER

United States Magistrate Judge Kathleen DeSoto entered Findings and Recommendations in this matter on February 14, 2020. (Doc. 10). The Magistrate Judge recommended that this matter be dismissed as Puentes had failed to state a claim for relief and failed to file an amended complaint by the given deadline. (*Id.*)

After the Magistrate Judge concluded that Puentes had failed to state a claim upon which relief could be granted, (Doc. 6), the Magistrate Judge granted Puentes leave to file an amended complaint on or before January 10, 2020. (Doc. 9).

Puentes failed to file an amended complaint. The Magistrate Judge recommended the case be dismissed. (Doc. 10). Neither party filed objections to the Findings and Recommendations. The Court reviews for clear error any portion to which no party specifically objected. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

The Magistrate Judge correctly concluded that this case should be dismissed for failure to state a claim. Puentes's complaint alleges that various defendants failed to afford him appropriate medical care after he was involved in an altercation with several other inmates. (Doc. 5). As the Magistrate Judge noted, Puentes did receive medical treatment, including a CT scan, an x-ray, and blood tests. (Doc. 1-1). None of the evaluations resulted in abnormal findings. (*Id.*). Puentes was given the opportunity to amend his complaint, but has failed to do so. (Doc. 6, 9). Therefore, the Magistrate Judge did not clearly err in concluding that this case should be dismissed for failure to state a claim

IT IS ORDERED that the Findings and Recommendations (Doc. 10) are **ADOPTED IN FULL**.

IT IS FURTHER ORDERED:

1. This case is **DISMISSED** for failure to state a claim.
2. The Clerk of Court is directed to enter judgment accordingly.

3. The Clerk of Court shall have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.
4. The Clerk of Court shall have the docket reflect that his dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Puentes failed to state a claim upon which relief may be granted.

DATED this 31st day of March, 2020.



Brian Morris, Chief District Judge
United State District Court